



June 27, 2001

Ms. Patricia Muniz-Chapa
Public Information Coordinator
University of Texas System
201 West 7th Street
Austin, Texas 78701-2909

OR2001-2757

Dear Ms. Muniz-Chapa:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148366.

The University of Texas at Austin (the "university") received a written request for "police records and reports pertaining to criminal trespass and sexual assault on the UT campus from 1990 to present." You state that the requestor has modified her request to include only those records that pertain to closed investigations. You further state that the university intends to release all records regarding criminal trespass "that concluded in a final result of conviction or deferred adjudication," as well as all records pertaining to criminal trespass warnings. You contend, however, that the remaining requested information, representative samples of which you have submitted to our office, is excepted from required public disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We have also received comments from a private law firm arguing that portions of the information at issue are excepted from public disclosure. *See Gov't Code § 552.304.*

Because section 552.108 is the more inclusive exception to disclosure, we will discuss it first. Section 552.108(a)(2) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency . . . that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." Among the documents at issue are university police department records pertaining to criminal trespass and sexual assault investigations that were

concluded but did not result in a conviction or deferred adjudication. We therefore conclude that most of the information from these investigations, including the names of the alleged assailants in the sexual assault investigations, may be withheld pursuant to section 552.108(a)(2).¹

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Accordingly, the university must release these types of information from the police files otherwise protected by section 552.108(a)(2) in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), with the following exception.

You contend that the identities of victims of sexual assault are protected by common law privacy in conjunction with section 552.101 of the Government Code. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Clearly, an instance of sexual assault implicates the privacy interests of the assault victim. *See* Open Records Decision No. 339 (1982) (identity of sexual assault victim protected by common law privacy). We therefore conclude that the university must withhold all information tending to identify the victim of an alleged sexual assault contained in the records coming under the protection of section 552.108(a)(2).²

Finally, we address the extent to which the remaining type of police files at issue, *i.e.*, investigations of sexual assault that resulted in a conviction or deferred adjudication, is excepted from required public disclosure. Because this type of record does not come under the protection of section 552.108, we must address the applicability of section 552.101 to these records. Section 552.101 of the Government Code excepts information from required public disclosure when the information is confidential by law. One of the sexual assault files you submitted to our office, Case # 95-0031, pertains to the sexual assault of a seventeen year old. Subsection (a) of section 261.201 of the Family Code provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

¹Because we resolve this aspect of your request under section 552.108(a)(2), we need not address the applicability of section 552.130 to these records.

²We see no rationale, however, for withholding the pseudonym, if any, that the assault victim has chosen to use.

purposes consistent with . . . [the Family] code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under . . . chapter [261 of the Family Code] and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under . . . chapter [261 of the Family Code] or in providing services as a result of an investigation.

The victim of the alleged assault in Case # 95-0031 was a child for purposes of chapter 261. See Fam. Code § 101.003(a) ("child" is generally defined as "a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes"). We therefore conclude that the university must withhold Case #95-0031 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

The other sexual assault file you submitted to this office, Case # 92-3999, pertains to the assault of an adult.³ Unlike the documents you submitted to our office that are protected by section 552.108(a)(2), the documents you submitted to our office pertaining to Case #92-3999 reveal that the identity of the sexual assault victim appears in public court records. Consequently, this assault victim's identity is not protected from public disclosure on privacy grounds and therefore must be released. See *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (information contained in public court records not protected by common law privacy). However, after reviewing the records at issue, we believe that other portions of the police records implicate the victim's and another individual's privacy interests. We have marked those documents to indicate the information the university must withhold pursuant to common law privacy.

We additionally note that contained among the documents in Case #92-3999 are the victim's medical records, which may be released only in accordance with the Texas Medical Practice Act (the "MPA"), title 3, subtitle B of the Occupations Code. See Open Records Decision No. 598 (1991). Section 159.002(b) of the MPA provides the following:

³You timely submitted this police file to our office in response to our written request made pursuant to section 552.303 of the Government Code for additional samples of assault files resulting in a conviction or deferred adjudication. You represent that Case # 92-3999 and # 95-0031 are the only responsive files of this type that are maintained by the university.

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

The release of the "medical records" is governed by the MPA. Accordingly, the university is authorized to release the medical records only as specified in chapter 159 of the Occupations Code. We have marked the documents that the university must withhold pursuant to the MPA.

We also note that Case # 92-3999 contains social security numbers. Social security numbers are excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if the social security numbers were obtained or are maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 (1994)*. It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the university pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the university to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the university should ensure that these numbers were not obtained or maintained by the university pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we note that Case # 92-3999 contains information the university must withhold pursuant to section 552.130(a)(2) of the Government Code. Section 552.130(a)(2) requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, the university must withhold the vehicle license plate number contained in Case # 92-3999 pursuant to section 552.130(a)(2).

In summary, the university is authorized to withhold pursuant to section 552.108(a)(2) most of the requested information contained in university police records that pertain to investigations that did not result in a conviction or deferred adjudication; the university must release, however, all "basic information" contained in those records, except for the identities of victims of sexual assault, which must be withheld pursuant to section 552.101. Because the assault victim in Case # 95-0031 was a minor at the time of the assault, the records pertaining to this investigation must be withheld in their entirety pursuant to section 261.201 of the Family Code.

With regard to Case # 92-3999, the victim's identity must be released because the victim's identity is contained in public court records; however, we have marked the information the

university must withhold pursuant to section 552.101 to protect the privacy interests of the assault victim and another individual. The medical records contained in Case # 92-3999 may be released only in accordance with the Medical Practice Act, and the license plate number contained in this file must be withheld under section 552.130(a)(2) of the Government Code. The social security numbers contained in the records at issue may be confidential under section 552.101 and federal law. All remaining information in this file must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

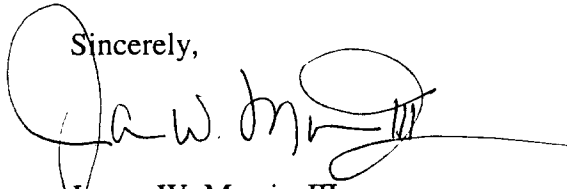
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large, stylized initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/seg

Ref: ID# 148366

Enc. Submitted documents

c: Ms. Shaka McGlotten
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(w/o enclosures)